IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4440 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDULAL M PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

TANNA ASSOCIATES for Petitioner(s) : 1,
MS ARCHNA RAVAL, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
MR AMIT M PANCHAL for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/11/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and/or order

directing the respondent – State Government not to go ahead in the matter of selection and appointment by promotion to the post of Additional Commissioner of Industries by considering the name of any person until the prayers of the petitioner put forth in the Hon'ble High Court of Calcutta and the representation of the petitioner in the matter of his confirmation, his crossing efficiency bar and promotion to the post of Joint Commissioner of Industries and in the matter relating to the adverse remarks in the Confidential Report are finally decided and communicated to the petitioner and petitioner may be allowed to know his position in the cadre of Joint Commissioner of Industries by publication of seniority list of all the persons working in the same cadre.

2. It appears from the record that some proceedings were pending before the Calcutta High Court at the relevant time. The learned counsel appearing on behalf of the petitioner is not in a position to point out the outcome of the proceedings before the Calcutta High Court. The only contention on behalf of the petitioner is that as the petitioner was permitted to cross efficiency bar, the petitioner was required to be promoted to the post of Additional Commissioner of Industries and his name ought to have been considered for promotion to the said post.

3. An affidavit in reply is filed on behalf of the State Government. It is pointed out in the affidavit in reply that the petitioner was appointed as Deputy Commissioner of Industries (Class – I) on probation of two years w.e.f. 31.8.1978 and the period of probation would have expired on 30.8.1980. However, during the probation, his work was not satisfactory and therefore, the Government could have terminated his services forthwith without assigning any reason as per the rules. But instead of doing so, a chance was given to him to improve his work. It is also further submitted that during the years 1980-81 and 1981-82, also the work of the petitioner was not satisfactory at all. However, further chance was given to the petitioner to improve instead of terminating the services of the petitioner. It is also further submitted in the reply that the State Government has published final/provisional seniority list of the Joint Commissioner of Industries cadre and the established policy of the State Government for selection of top level posts is already followed in selection of a person for the post of Additional Industries Commissioner. Thus, it appears that the State Government has adopted the theory of selectivity for filling up the posts of Additional Industries Commissioner and therefore, merely because, the petitioner was permitted to cross efficiency bar, it cannot

be said that the petitioner is the only best person available. Considering the above, the action of the respondent in filling up the posts of Additional Industries Commissioner cannot be said to be in any way illegal and/or arbitrary and/or dehors the rules and/or settled position of selection and/or promotion.

4. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed and is, accordingly, dismissed. Ad-interim relief, if any, stands vacated forthwith. Rule is discharged. However, there shall be no order as to costs.

[M.R.SHAH, J.]

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